Larty, L. L. Green, and Lee Hopper, under the rules and regulations above set forth, promulgated as aforesaid by the Secretary of Agriculture aforesaid;

That at all the times in this indictment mentioned, the said defendant, Ben Kapp, was and for a long time prior thereto had been a registered trader on the Oklahoma City Livestock Market under the trade name of "Kapp & Company", with offices in the Livestock Exchange Building, in Oklahoma City, Oklahoma, and also during that time was registered under the Packers and Stockyards Act as a trader; and that the said defendant, Bert Cox, was at all the times mentioned in this indictment and for a long time prior thereto had been a registered trader on the Oklahoma City Livestock Market as a commission firm and was registered under the Packers and Stockyards Act as a commission firm and market agency under the firm name of "Cox-Noel Commission Company" with offices in the Livestock Exchange Building, at Oklahoma City, Oklahoma; and that it was a part of the said conspiracy that Bert Cox and Ben Kapp would and by using their influence through commission firms on the Chicago, Illinois, Livestock Market, secure permits for the shipment of pigs to that market for sale to the Secretary of Agriculture at premium prices by the defendants Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, knowing that these defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, were not producers of pigs and that the pigs which they would ship on the permits to be secured by the said defendants, Bert Cox and Ben Kapp, were not the property of original producers;

That it was further intent and purpose of the said defendants and each of them, and a part of said conspiracy, that the said defendants Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, would furnish Rice Brothers and the Quinn Commission Company,
6 of Chicago, Illinois, false information as to the actual ownership of the pigs to be contained in each shipment sent to these firms and to thereby cause representatives of those commission firms, acting as their agents in the sale of these pigs to the Secretary of Agriculture, to give false information and make false statements to representatives of the Secretary of Agriculture leading such representatives of the Secretary of Agriculture to believe that said pigs were being bought by said Secretary of Agriculture from the original producers thereof and that they were, therefore, eligible to the benefit payments provided for under the rules and regulations above set forth;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that at the hereinafter said times, in pursuance of, in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, the hereinafter named defendants, herein indicted, did unlawfully, wilfully, knowingly, and feloniously, at the several times and places hereinafter mentioned in connection with their names, the several overt acts hereinafter specified:

OVERT ACTS

1. That on or about September 2, 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wired Sam J. Acker, of Rice Brothers, Chicago, Ill., for permits for two double decks in the name of Lee Hopper.

2. That on or about September 4, 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wired Rice Bros., of Chicago, Illinois, relative to pig permit for Lee Hopper.

3. That on or about September 5, 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wired Rice Bros., of Chicago, Illinois, asking for permit for Ralph McClardy.

4. That on or about September 7, 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wrote to Sam J. Acker, of Rice Bros., Chicago, Ill., directing disposition of the proceeds from shipments of pigs by Lee Hopper and Ralph McLarty.

7 5. That on or about September 6, 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wired Rice Bros., at Chicago, Illinois, advising shipment of two double decks McClardy pigs.

6. That on or about September 8, 1933, at Westville, Oklahoma, Tom Woods shipped six (6) carloads of pigs, consigned from T. C. Woods to the Quinn Commission Co., Chicago, Illinois, in cars K. C. S. 3024, 30372, 30213, 30117, and 30264, under K. C. S. waybills Nos. 1, 2, 3, 4, 5, and 6.

7. That on or about September 11, 1933, at Westville, Oklahoma, Tom Woods addressed a letter to J. E. Quinn Commission Company, at Chicago, Illinois, enclosing signed statements purporting to be authorizations from each farmer who owned pigs in the shipments set out in Overt Act No. 6.

8. That on or about September 11, 12, 13, and 14, 1933, the defendant Tom Woods caused 1,651 of the pigs shipped, as set out in Overt Act No. 6, to be sold to agents of the Secretary of Agriculture at premium prices.

9. That on or about September 9, 1933, at Okmulgee, Oklahoma, the defendant Ralph McLarty shipped two (2) carloads of pigs to Rice Bros., of Chicago, Illinois, for sale to the Secretary of Agriculture, in cars S. L. S. F. 47362 and 47348, under S. L. S. F. waybills Nos. 212 and 213.

10. That on or about September 16, 1933, the defendant Ralph McLarty caused to be sold to agents of the Secretary of Agriculture, at Chicago, Illinois, at premium prices, 464 of the pigs contained in the shipment set out in Overt Act No. 9.

11. That on or about September 9, 1933, at Okmulgee, Oklahoma, the defendant Ralph McLarty mailed to Rice Bros., Chicago, Illinois, statements alleged to have been signed by the farmers owning pigs in shipments set out in Overt Act No. 9.

12. That on or about September 5, 1933, the defendant Bert Cox, at Oklahoma City, Oklahoma, arranged with the defendant Ben Kapp

to secure a permit for a shipment of pigs, for sale to the Secretary of Agriculture at Chicago, Illinois, by Ralph McLarty.

8 13. That on or about September 7, 1933, at Oklahoma City, Oklahoma, the defendant Bert Cox received from the defendant Ralph McLarty remuneration for securing the permit as set out in Overt Act. No. 12.

14. That on or about September 4, 1933, at Oklahoma City, Oklahoma, the defendant Bert Cox arranged through the defendant Ben Kapp to secure permits for the sale of pigs to representatives of the Secretary of Agriculture at Chicago, Illinois, by Tom Woods.

15. That on or about September 14, 1933, at Oklahoma City, Oklahoma, the defendant Bert Cox received from the defendant Tom Woods remuneration for securing permits arranged for by him, as set out in Overt Act No. 14.

16. That on or about September 8, 1933, at Oklahoma City, Oklahoma, the defendant L. L. Green arranged with the defendants Bert Cox and Ben Kapp to secure a permit entitling him to ship a carload of pigs to Chicago for sale to the Secretary of Agriculture.

17. That on or about September 8, 1933, the defendant L. L. Green delivered his check, in the sum of $50.00, to the defendant Ben Kapp, at Oklahoma City, Oklahoma, in payment for the securing of permit, as set out in Overt Act No. 16.

18. That on or about September 8, 1933, at Lamar, Oklahoma, L. L. Green caused to be shipped two carloads of pigs to the Quinn Commission Co., Chicago, Illinois, for sale to the Secretary of Agriculture.

19. That on or about September 16, 1933, L. L. Green caused Rosenbaum Bros., at Chicago, Illinois, to sell to Wilson & Company, to the account of the Secretary of Agriculture, 253 of the pigs shipped by him, as set out in Overt Act No. 18.

20. That on or about September 8, 1933, the defendant L. L. Green, at Lamar, Oklahoma, mailed to J. E. Quinn Commission Company, Chicago, Ill., statements alleged to have been signed by owners of the pigs contained in shipment, as set out in Overt Act No. 18.

9 21. That on or about the 2nd day of September 1933 the defendant Lee Hopper arranged with the defendant Bert Cox to secure through the defendant Ben Kapp a permit for a shipment of pigs to Chicago, Illinois, for sale to the Secretary of Agriculture.

22. That on or about September 11, 1933, the defendant Lee Hopper paid, through the First National Bank of McAlester, Oklahoma, a draft for $26.00 drawn on him by the Cox-Noel Commission Company to cover charges connected with procuring permits for the sale of pigs to the Secretary of Agriculture.

23. That on or about September 7, 1933, at McAlester, Oklahoma, the defendant Lee Hopper mailed to Rice Bros., at Chicago, Illinois, certificates of ownership purporting to have been signed by owners of the pigs which he was shipping on that date.

24. That on or about September 7, 1933, at McAlester, Oklahoma, the defendant Lee Hopper caused to be shipped to Rice Bros., Chicago, Illinois, four (4) carloads containing 763 pigs for sale to the Secretary of Agriculture, said pigs being loaded in cars T. P. 22052, 22325, 22275, and M. K. T. 46865, under M. K. T. waybills No. 24, 25, 26, and 27.

25. That on or about September 13, 1933, the defendant Lee Hopper caused Rice Bros., at Chicago, Illinois, to sell to Guggenheim Bros. and Armour & Company, for the account of the Secretary of Agriculture, 753 of the pigs which had been shipped by him, as set out in Overt Act No. 24.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, in the name and by the authority of the United States of America, do further find and present:

That, at Oklahoma City, Oklahoma, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, at Westville, Adair County; at McAlester, Pittsburg County; at Okmulgee, Okmulgee County, all in the State of Oklahoma; and at Chicago, Cook County, in the State of Illinois; and at divers other places to the Grand Jurors unknown and hence not herein stated, Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green, whose more full, true, and correct names are to the Grand Jurors unknown, together with other persons to the Grand Jurors unknown, between September 1, 1933, and thence continuously thereafter until the return of this indictment, did unlawfully, wilfully, knowingly, corruptly, and feloniously conspire, combine, confederate, and agree together, to and with each other, and to and with divers other persons to the Grand Jurors unknown, in violation of Section 88, Title 18, U. S. C. A., to commit and do the acts and things made offenses and crimes against and in violation of the laws of the United States of America by Section 80 of Title 18, U. S. C. A., entitled:

"Presenting false claims; aiding in obtaining payment thereof.—Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the pay-

ment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement or entry shall be fined not more than $10.000.00 or imprisonment not more than ten years, or both."

That the United States was at all times alleged in this indictment making plans to purchase and purchasing pigs from producers under the provisions of an Act of Congress approved May 12, 1933, known as Public Act No. 10 of the 73d Congress, entitled "An Act to
11 Relieve the Existing National Economic Emergency by Increasing Agricultural Purchasing Power, to Raise Revenue for Extraordinary Expenses Incurred by Reason of Such Emergency, to provide Emergency Relief with Respect to Agricultural Indebtedness, to Provide for the Orderly Liquidation of Joint Stock Land Banks, and for Other Purposes", and especially Chapter 26 of Title 7 thereof, in the United States Code, Annotated, and the regulations and rules made and promulgated by the Secretary of Agriculture of the United States to carry out the powers invested in him by said Act, and to make benefit payments under said Act, and that for the purpose of assuring that the benefit payments under said Act would reach the producers the Secretary of Agriculture promulgated on August 21, 1933, rules and regulations to the effect as follows:

"Hogs owned, consigned, or 'planted' by registered market yard traders or speculators are not eligible to benefit payments."

"Name and address of owner of hogs declared eligible to benefit payments must be furnished processor."

and on September 1, 1933, the said Secretary of Agriculture promulgated further rules and regulations to the effect as follows:

"Beginning Tuesday morning, September 5, no pigs will be purchased for the account of the Secretary of Agriculture unless permission has been granted authorizing the shipment.

"Permits must be secured from authorized processors through commission firms operating at authorized processing points or directly from authorized packers in cases where pigs will be shipped directly to authorized packers. However, pigs may be handled for individual farms by cooperative shipping associations or by country buyers, providing the farmer supplies with the pigs a letter or telegram constituting the permit authorizing the shipment. Cooperative shipped associations or country buyers also may act on behalf of the original owners in securing permits, but the permits must be granted in the name of the original owners.

"Permits obtained, beginning Tuesday, September 5, through commission firms or authorized packers are to be evidenced by letter or telegram to the original owner.

"Beginning immediately, no permits are to be issued by commission firms or by authorized packers to any one other than the original owner of the pigs. In no case are permits to be issued to any one owner for more than 200 head."

12 which said rules and regulations were in full force and effect during all the dates and times set forth in this indictment, as the defendants then and there well knew.

That is to say, it was the purpose and object of said conspiracy and of said conspirators, and each and all of them, that they, the said Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green, should then and there falsely and fraudulently make certain false statements and misrepresentations, with intent to defraud the United States of America and the Secretary of Agriculture of the United States of America, whereby there would be shipped and transported to Rice Brothers, and the Quinn Commission Company, at Chicago, in Cook County, Illinois, for sale to the Secretary of Agriculture and the United States of America, in violation of said rules and regulations promulgated by the Secretary of Agriculture, certain pigs which the said defendants, Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, had purchased and would purchase from farmers and producers of pigs in the State of Oklahoma and elsewhere, the exact places being to the Grand Jurors unknown, and said defendants would indicate and disclose, represent and state that the pigs so shipped would be the property of various producers other than the defendants, and which said pigs, when so shipped to the said Rice Brothers and the Quinn Commission Company at Chicago, Illinois, would be sold by them to the United States of America at the premium price to be paid for said pigs under the rules and regulations promulgated by the Secretary of Agriculture hereinabove set forth, and which said pigs would, in truth and in fact, be owned by and be the property of the said Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, defendants herein;

That it was the purpose and object of said conspiracy and of said conspirators and each and all of them that they, the said Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green, should then and there falsely and fraudulently make certain false statements and misrepresentations, with intent to defraud the United States of America and the Secretary of Agriculture of the United States of America; that they, the said defendants, would state and represent that producers, persons other than the defendants,

13 were the original owners and producers of the pigs that would be shipped and transported and sold to the Secretary of Agriculture of the United States of America when, in truth and in fact,

they, the said defendants and each of them, knew that the said pigs were the property of and were owned by the said defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, and were not at that time the property of the original producer thereof, and said defendants and each of them, then and there, well knew that the said defendants, Tom Wood, Ralph McLarty, L. L. Green, and Lee Hopper, were not entitled to receive premium prices for said pigs so sold and owned by them, they the said Tom Woods, Ralph McLardy, L. L. Green, and Lee Hopper, under the rules and regulations above set forth, promulgated as aforesaid by the Secretary of Agriculture aforesaid;

That at all the times in this indictment mentioned, the said defendant, Ben Kapp, was and for a long time prior thereto had been a registered trader on the Oklahoma City Livestock Market under the trade name of "Kapp & Company" with offices in the Livestock Exchange Building, in Oklahoma City, Oklahoma, and also during that time was registered under the Packers and Stockyards Act as a trader; and that the said defendant, Bert Cox, was at all the times mentioned in this indictment and for a long time prior thereto had been a registered trader on the Oklahoma City Livestock Market as a commission firm and was registered under the Packers and Stockyards Act as a commission firm and market agency under the firm name of "Cox-Noel Commission Company" with offices in the Livestock Exchange Building, at Oklahoma City, Oklahoma; and that it was a part of the said conspiracy that Bert Cox and Ben Kapp would and by using their influence through commission firms on the Chicago, Illinois, Livestock Market, secure permits for the shipment of pigs to that market for sale to the Secretary of Agriculture at premium prices by the defendants Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, knowing that these defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, were not producers of pigs and that the pigs which they would ship on the permits to be secured by the said defendants, Bert Cox and Ben Kapp, were not the property of original producers;

That it was further the intent and purpose of the said defendants and each of them, and a part of said conspiracy, that the said
14 defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, would furnish Rice Bros., and the Quinn Commission Company, of Chicago, Illinois, false information as to the actual ownership of the pigs to be contained in each shipment sent to those firms and to thereby cause representatives of those commission firms, acting as their agents in the sale of these pigs to the Secretary of Agriculture, to give false information and make false statements to representatives of the Secretary of Agriculture leading such representatives of the Secretary of Agriculture to believe that said pigs were being bought by said Secretary of Agriculture from the original producers thereof and that they were, therefore, eligible to the benefit payments provided for use the rules and regulations above set forth.

That it was further a part of said conspiracy that the said defendants would unlawfully, wilfully, knowingly, and feloniously present and cause to be presented to Wilson & Company, Armour & Company, and Guggenheim Bros., Inc., all of Chicago, Illinois, authorized processors of pigs and hogs under contract with the Secretary of Agriculture of the United States, invoices for pigs which would be shopped to Rice Bros., and the Quinn Commission Company, of Chicago, Illinois, by the defendants Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, and sold by the said Rice Bros., and Quinn Commission Company to the said Wilson & Company, Armour & Company, and Guggenheim Bros., Inc., for the account of the Secretary of Agriculture at premium process as being the property of various alleged original producers and thereby cause the said Wilson & Company, Armour & Company, and Guggenheim Bros., Inc., to present and cause to be presented to Edward M. Tyler, Field Auditor of the Agricultural Adjustment Administration, who was authorized by the Secretary of Agriculture to approve for payment vouchers and claims upon or against the government of the United States of America and the Department of Agriculture covering the purchase of pigs during the Emergency Hog Marketing Program, vouchers and claims for large sums of money for approval and payment by the government of the United States of America, knowing said vouchers and claims were and would be false, fictitious, and fraudulent when so presented.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that at the hereinafter said times, in pursuance of, in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, the hereinafter named defendants, herein indicted, did unlawfully, wilfully, knowingly, and feloniously, at the several times and places hereinafter mentioned in connection with their names, the several acts hereinafter specified.

OVERT ACTS

1. That on or about the 6th day of September 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wrote Mr. J. A. Quinn, of Quinn Commission Company, Union Stock Yards, Chicago, Illinois, requesting a permit for Ralph McLardy to ship three (3) double decks of government pigs.

2. That on or about the 7th day of September 1933, at Oklahoma City, Oklahoma, the defendant Ben Kapp wrote Mr. J. A. Quinn, of the Quinn Commission Company, Chicago, Illinois, advising him that three double decks of pigs would be shipped by Tom Woods from Westville, Oklahoma, on the permit which was issued for three double decks to arrive at Chicago on September 11, 1933.

3. That on or about the 5th day of September 1933, the defendant Bert Cox, at Oklahoma City, Oklahoma, arranged, through the defendant Ben Kapp, to secure a permit for the shipment of a double

deck of government pigs by Ralph McLarty from Okmulgee, Oklahoma, to Rice Bros., at Chicago, Ill.

4. That on or about the 8th day of September 1933, at Oklahoma City, Oklahoma, the defendant Bert Cox arranged, through the defendant Ben Kapp, to secure a permit for shipment of government pigs to the Quinn Commission Company, at Chicago, Illinois, by L. L. Green.

5. That on or about the 5th day of September 1933, at Oklahoma City, Oklahoma, the defendant Bert Cox arranged with the defendant Ben Kapp to secure a permit for the shipment of government pigs by Lee Hopper from McAlester, Oklahoma, to Rice Bros., of Chicago, Illinois.

16 6. That on or about September 11, 1933, the defendant Tom Woods caused Rosenbaum Bros., of Chicago, Illinois, agents for the Quinn Commission Company, to present and cause to be presented to Armour & Company, at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United States of America, invoices covering the following pigs:

271	pigs	@	$9.00	per	cwt.	for	a total of	$895.50
65	"		9.00	"	"	"	"	216.90
257	"		8.75	"	"	"	"	984.37
330	"		9.00	"	"	"	"	1,213.20

which pigs had been shipped by the said Tom Woods to the Quinn Commission Co., of Chicago, Illinois, as alleged in Overt Act No. 6 of the First Count herein, and which pigs had been sold by Rosenbaum Bros., as agents for the Quinn Commission Company, to Armour & Company for the Secretary of Agriculture as being the property of various producers, thereby causing the said Armour & Company to present and cause to be presented to E. M. Tyler, Field auditor of the Agricultural Adjustment Administration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, a voucher for approval and payment by the United States of America dated on or about September 11, 1933, containing among other items the items mentioned hereinabove, which voucher was designated by the said E. M. Tyler as C–3269.

7. That on or about September 12, 1933, the defendant Tom Woods caused Rosenbaum Bros., of Chicago, Illinois, agents for the Quinn Commission Company, to present and cause to be presented to Wilson & Company, at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United States of America, invoices covering the following pigs:

174	pigs	@t	$9.00	per	cwt.	for	a total of	$624.60
350	"	"	8.75	"	"	"	"	1,288.87

which pigs had been shipped by the said Tom Woods to the Quinn Commission Company of Chicago, Illinois, as alleged in Overt Act

No. 6 of the First Count herein, and which pigs had been sold by Rosenbaum Bros., as agents for the Quinn Commission Company to Wilson & Company for the Secretary of Agriculture as being the property of various producers, thereby causing the said Wilson & Company to present and cause to be presented to E. M. Tyler, Field Auditor of the Agricultural Adjustment Administration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, vouchers for approval and payment by the United States of America dated on or about September 12, 1933, containing, among other items, the items mentioned hereinabove, which vouchers were designated by the said E. M. Tyler as C–3116 and C–3455.

8. That on or about September 16, 1933, the defendant Ralph McLarty caused Rice Bros., of Chicago, Illinois, to present and cause to be presented to Armour & Company, at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United States of America, invoices covering the following pigs:

299 pigs @ $8.75 per cwt. for a total of $1,133.12

which pigs had been shipped by the said Ralph McLarty to Rice Bros., of Chicago, Illinois, as alleged in Overt Act No. 9, of the First Count herein, and which pigs had been sold by Rice Bros. to Armour & Company for the Secretary of Agriculture as being the property of various producers, thereby causing the said Armour & Company to present and cause to be presented to E. M. Tyler, Field Auditor of the Agricultural Adjustment Administration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, a voucher for approval and payment by the United States of America dated on or about September 16, 1933, containing, among other items, the item mentioned hereinabove, which voucher was designated by the said E. M. Tyler as C–4923.

9. That on or about September 16, 1933 the defendant Ralph McLarty caused Rice Bros., of Chicago, Illinois, to present and cause to be presented to Guggenheim Bros., Inc., at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United State' of America, invoices covering the following pigs:

92 pigs @ $8.75 per cwt. for a total of $340.37

which pigs had been shipped by the said Ralph McLarty to Rice Bros., of Chicago, Illinois, as alleged in Overt Act No. 9, of the First Count herein, and which pigs had been sold by Rice Bros. to Guggenheim Bros., Inc., at Chicago, for the Secretary of Agriculture as being the property of various producers, thereby causing the said Guggenheim Bros., Inc., to present and cause to be presented to E. M. Tyler, Field auditor of the Agricultural Adjustment Admin-

istration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, a voucher for approval and payment by the United States of America dated on or about September 16, 1933, containing, among other items, the item mentioned hereinabove, which voucher was designated by the said E. M. Tyler as C–4464.

10. That on or about September 16, 1933, the defendant L. L. Green caused Rosenbaum Bros., of Chicago, Illinois, agents for the Quinn Commission Company, to present and cause to be presented to Wilson & Company, at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United States of America, invoices covering the following pigs:

170 pigs @ $8.75 per cwt. for a total of $700.40
83 pigs @ 6.75 per cwt. for a total of 474.52

which pigs had been shipped by the said L. L. Green to the Quinn Commission Company, of Chicago, Illinois, as alleged in Overt Act No. 18 of the First Count herein, and which pigs had been sold by Rosenbaum Bros., as agents for the Quinn Commission Company to Wilson & Company for the Secretary of Agriculture as being the property of various producers, thereby causing the said Wilson & Company to present and cause to be presented to E. M. Tyler, Field Auditor of the Agricultural Adjustment Administration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, vouchers for approval and payment by the United States of America dated on or about September 16, 1933, containing, among other items, the items mentioned hereinabove, which vouchers were designated by the said E. M. Tyler as C–4302 and C–4303.

19 11. That on or about the 12th day of September, 1933, the defendant Lee Hopper caused Rice Bros., of Chicago, Illinois, to present and cause to be presented to Guggenheim Bros., Inc., at Chicago, Illinois, an authorized processor of pigs and hogs under contract with the Secretary of Agriculture and the United States of America, invoices covering the following pigs:

439 pigs @ $8.75 per cwt. for a total, $1,707.12
159 pigs @ 8.50 per cwt. for a total, 645.15

which pigs had been shipped by the said Lee Hopper to Rice Bros. of Chicago, Illinois, as alleged in Overt Act No. 24 of the First Count herein, and which pigs had been sold by Rice Bros. to Guggenheim Bros., Inc., for the Secretary of Agriculture as being the property of various producers, thereby causing the said Guggenheim Bros., Inc., to present and cause to be presented to E. M. Tyler, Field Auditor of the Agricultural Adjustment Administration, authorized by the Secretary of Agriculture to approve for payment vouchers covering the purchase of pigs during the Emergency Hog Marketing Program, a voucher for approval and payment by the United States of America dated on or about September 12, 1933, containing, among other items,

the items mentioned hereinabove, which voucher was designated by the said E. M. Tyler as C–3231.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

FRANCIS M. DUDLEY,
Assistant United States Attorney.

(Endorsed:) No. 11379. United States District Court, Western District of Oklahoma. The United States of America vs. Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green. Indictment. Violation Section 88, Title 18, U. S. C. A. A true bill: George E. Calvert, Foreman. Returned and filed in open court this 29th day of Nov. A. D. 1935. Theodore M. Filson, Clerk. Bail $500.

20 In United States District Court

[Title omitted.]

Demurrer to Indictment

(Filed March 28, 1936)

Now comes Ralph McLarty and demurs to the first count of the indictment herein on the grounds and for the reason that the same wholly fails to state facts which constitute an offense against the laws of the United States.

Said defendant further demurs to the second count of the indictment herein on the grounds and for the reason that the same wholly fails to state facts which constitute an offense against the laws of the United States.

(Sgd.) STEELE & BOATMAN,
Attorney for Defendant Ralph McLarty.

[File endorsement omitted.]

21 In United States District Court

[Title omitted.]

Demurrer to Indictment

(Filed March 28, 1936)

Comes now the Defendants, Bert Cox, Lee Hopper, Tom Woods, and L. L. Green, and having read the indictment in the above cause demur to the first count of same, and for reasons show:

1. That said indictment and the matters therein contained, in the manner and form as same are stated and set forth therein, are not sufficient in law, and that the Defendants are not bound by the law of the land to answer the same, and this they are ready to verify.

2. That said indictment is duplicitous in that it charged more than one offense against the laws of the United States.

3. That said indictment is duplicitous in that it charges each of these Defendants with conspir'cy, when in truth and in fact the overt acts set out in said indictment show that there was no conspir'cy nor common action between the defendants Lee Hopper and L. L. Green, but show that the said Lee Hopper acted with the Defendant Ben Kapp, from McAlester, Oklahoma, and that L. L. Green acted with the Defendant Ben Kapp, from Lamar, Oklahoma, which were separate and distinct transactions, and said indictment does not state that Lee Hopper and L. L. Green acted together in any of the overt acts set out in said indictment.

22 4. The indictment charges that the Defendants conspired to defraud the government in violating an Act of Congress approved May 12, 1933, known as "Public Act No. 10" of the 73d Congress, and that said violation occurred in September 1933. That said act, and especially the sections of said act named in said indictment, to-wit, Sections 2 and 3 of said Act, has been declared null and void by the Supreme Court of the United States, and under said holdings of said Court the Acts set forth in said indictment do not constitute an offense against the laws of the United States.

5. That said indictment charges that the Defendants conspired to defraud the Government of the United States in that they conspired to sell hogs to the Secretary of Agriculture of the United States and caused to be issued permits to sell hogs to the said Secretary of Agriculture, and in securing said permits gave false information, and alleged that said Acts on the part of the Defendants were in violation of the Act of Congress approved May 12, 1933, known as "Public Act No. 10" of the 73d Congress, an act to relieve the national existing economic emergency by increasing agricultural purchasing power, and your Defendants say that said Act of Congress in no place gives the Secretary of Agriculture power and authority to buy hogs or pigs, and when the Secretary of Agriculture undertook to purchase pigs it was beyond the power vested in him by the Act of Congress, and said acts on the part of the Secretary of Agriculture were null and void and without effect.

6. Said indictment charges that the Secretary of Agriculture promulgated rules and regulations governing the buying of hogs or pigs by the government of the United States from the producers thereof, and Defendants say that said rules and regulations promulgated by said Secretary of Agriculture were null and void for the reason: That the Act of Congress did not authorize the Secretary of Agriculture to purchase hogs or pigs, but only authorized him to purchase cotton, and that the purchase of hogs was not included in said

23 act, and therefore the purchase of hogs was excluded. That said acts of the Secretary of Agriculture were null and void.

8. That said indictment charges that the Defendants were guilty of conspiracy for the reason that they violated certain rules and

regulations of the Secretary of Agriculture, and your Defendants say that said rules and regulations are not part of the statutes of the United States and that an indictment cannot be predicated upon the violation of a rule or regulation of said Secretary of Agriculture, and therefore the said indictment is null and void.

9. That said indictment charges that these Defendants violated rules of the Secretary of Agriculture, said rules being promulgated on September 31, 1933, with reference to farm products, and that said Act provided as follows: "However, pigs may be handled for individual farms by cooperative shipping associations or by country buyers", and said indictment did not negative the fact that the Defendants, Lee Hopper and L. L. Green, were country buyers within the meaning and intent of said rule. That said indictment is null and void.

10. That said indictment sets forth that the Defendants, Lee Hopper and Ben Kapp, entered into a conspiracy at McAlester, Oklahoma, to defraud the government, and that the city of McAlester, State of Oklahoma, is in the Eastern District of Oklahoma, and not in the Western District of Oklahoma, and that said allegation shows on its fact that this Court is without jurisdiction to try said charge.

11. That said indictment sets out further that the defendants, L. L. Green and Ben Kapp, entered into said consipracy at Lamar, Oklahoma, and that said Lamar, Oklahoma, is in the Eastern District of Oklahoma, and said indictment shows on its fact that this Court is without jurisdiction to try said cause.

24 DEMURRER TO SECOND COUNT OF INDICTMENT

Defendants demur to the second count of said indictment, and for reasons show:

1. That said indictment and the matters therein contained in the manner and form as same are stated and set forth therein, are not sufficient in law and that the defendants are not bound by the law of the land to answer the same, and this they are ready to verify.

2. That said indictment is duplicitous in that it charged more than one offense against the laws of the United States.

3. That said indictment is duplicitous in that it charges each of these Defendants with conspiracy, when in truth and in fact the overt acts set out in said indictment show that there was no conspiracy nor common action between the Defendants, Lee Hopper and L. L. Green, but show that the said Lee Hopper acted with the Defendant Ben Kapp, from McAlester, Oklahoma, and that L. L. Green acted with the defendant, Ben Kapp, from Lamar, Oklahoma, which were separate and distinct transactions, and said indictment does not state that Lee Hopper and L. L. Green acted together in any of said transactions.

4. The indictment charges that the Defendants conspired to defraud the Government in violating an Act of Congress approved May 12, 1933, known as "Public No. 10" of the 73d Congress, and that said

violation occurred in September 1933. That said act, and especially the sections of said act named in said indictment, to-wit, Sections 2 and 3, of said Act, has been declared null and void by the Supreme Court of the United States, and under said holdings of said Court the Acts set forth in said indictment do not constitute an offense against the laws of the United States.

5. That said indictment in said second count charges that Defendants conspired to defraud the Government of the United States in that they conspired to make false statements and misrepresentations with the intent to defraud the United States of America and the Secretary of Agriculture of the United States of America, whereby they would ship and transport pigs to various commission companies at Chicago, Illinois, in violation of the rules and regulations promulgated by the Secretary of Agriculture, and thereby defraud the Government, and the Supreme Court of the United States declared the Act mentioned in said second count null and void, and therefore the rules and regulations of said Secretary of Agriculture with reference to said shipment are void, and that said allegations in said indictment do not constitute an offense against the laws of the United States.

6. That said indictment alleges that the defendants made false statements with reference to ownership of hogs sold to the Secretary of Agriculture, and these Defendants say that the Secretary of Agriculture had no power or authority to buy hogs, and that the Act of Congress under which the Secretary of *the* Agriculture was buying hogs was null and void and the rules and regulations covering the same were null and void, and that the said indictment in said cause does not state an offense against the laws of the United States.

7. That said indictment states further that the acts complained of in said second count against said Lee Hopper occurred in McAlester, Oklahoma, and is without the jurisdiction of the Western District of the State of Oklahoma, and that this Court had no jurisdiction to try said Lee Hopper on the second count.

8. That said indictment states further that the acts complained of in said second count against said L. L. Green occurred in Lamar, Oklahoma, and is without the jurisdiction of the Western District of the State of Oklahoma, and that this Court had no jurisdiction to try the said L. L. Green on the second count.

9. That the sub-section of 4 of Paragraph 9 of said Act of Congress, with reference to processing of hogs, has been repealed.

Wherefore, for want of sufficient indictment in this behalf, said Defendants, and each of them, pray judgment of the Court that they be dismissed and discharged from said premises in said indictment specified.

WILKINSON & HUDSON,
Attorneys for Defendants.

WW:TM.

[File endorsement omitted.]

27 In United States District Court for the Western District of Oklahoma

No. 11,379–Cr.

UNITED STATES OF AMERICA, PLAINTIFF

v.

BEN KAPP, ET AL., DEFENDANTS

Opinion on demurrers to indictment

Filed April 6, 1937

An indictment in this case was returned at the January 1935 Term of District Court on November 29, 1935, charging the defendants in the first count with a conspiracy to violate Sections 2 and 8 of an act known as Public Act No. 10 of the 73rd Congress, entitled "An Act to Relieve the Existing National Economic Emergency by Increasing Agricultural Purchasing Power, to Raise Revenue for Extraordinary Expenses Incurred by Reason of such Emergency, to Provide Emergency Relief with Respect to Agricultural Indebtedness, to Provide for the Orderly Liquidation of Joint Stock Land Banks, and for other purposes."

This act, which the defendants are charged with having violated, or having conspired to violate, was held unconstitutional and void by the Supreme Court of the United States on the 6th day of January 1936.

28 If this act was void, then no offense is charged in the first count of the indictment because the defendants could not be charged even under Section 88, Title 18, U. S. C. A., the conspiracy statute, with conspiring to violate a law which was not in existence for, under the decision of the Supreme Court, the law was void ab initio.

The second count alleges the same state of facts and charges the defendants with conspiring to violate Section 80, Title 18, U. S. C. A., entitled "Presenting False Claims; Aiding in Obtaining Payment Thereof", which is as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the

United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit", et cetera.

The overt acts charged, which would be material in this count, are that hogs were shipped under the representation by the defendants that they were the hogs of various producers when in fact the hogs belonged to one or more of the defendants.

There is no contention that the hogs were not shipped and that the bills, which were made to Armour and Company and other processors, were not correct bills, with the exception that the hogs did not originate from the sources represented by the defendants.

This ceases to be a material fact, if the provisions of the Agri-
29 cultural Adjustment Act are void. In other words, the representations, which are alleged to have been made, cease to be misrepresentations of material facts when the act itself falls.

The demurrer to the indictment, as to each count, is sustained. An exception is allowed.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 6th day of April 1937.
[File endorsement omitted.]

30 In United States District Court for the Western District of Oklahoma

No. 11379 Criminal

UNITED STATES OF AMERICA, PLAINTIFF

vs.

BEN KAPP, BERT COX, TOM WOODS ALIAS T. G. WOODS, RALPH MCLARTY ALIAS RALPH MCCLARDY, LEE HOPPER, AND L. L. GREEN ALIAS LINDSEY GREEN, DEFENDANTS

Order Sustaining Joint and Separate Demurrers of Defendants Bert Cox, Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green and Order Dismissing Case as to All Defendants

Filed April 6, 1937

Now, on this 6th day of April 1937, this case comes on for further and final hearing upon the joint and separate demurrers of the defendants Ben Kapp, Bert Cox, Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, to the indictment, and the Court, upon consideration thereof, finds that the same should be sustained.

The Court further finds that the defendant Ben Kapp has not filed a demurrer to the indictment herein, but that the Court should con-

sider at this time that a demurrer was filed on behalf of the defendant Kapp, and that the same as to said defendant should be sustained.

It is, therefore, considered, ordered, adjudged, and decreed by the Court that the joint and separate demurrers of the defendants heretofore filed herein be and the same are hereby sustained.

It is further ordered that said cause be and the same is hereby dismissed as to each of said defendants and said defendants are hereby discharged and their bonds exonerated; to which action of the Court the plaintiff excepts and its exception is by the Court allowed.

EDGAR S. VAUGHT,
Judge.

[File endorsement omitted.]

31 In United States District Court

[Title omitted.]

Petition for Appeal

Filed May 4, 1937

Comes now the United States of America, plaintiff herein, and states that on the 6th day of April 1937, demurrers of the defendants Ben Kapp, Bert Cox, Lee Hopper, Tom Woods, L. L. Green, and Ralph McLarty to each and every count of the indictment herein were by the court sustained, and the plaintiff feeling aggrieved at the ruling of said District Court in sustaining said demurrers, as to the second count, prays that it be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order insofar as it sustains the demurrers of the defendants to the second count of the indictment and that a Transcript of the record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA.
William C. Lewis,
WILLIAM C. LEWIS
United States Attorney, Western District of Oklahoma.

[File endorsement omitted.]

38 In United States District Court

[Title omitted.]

Assignments of Error

Filed May 5, 1937

Comes now the United States of America, by William C. Lewis, United States Attorney for the Western District of Oklahoma, and avers that in the record proceedings and judgment herein there is

manifest error and against the just rights of the said plaintiff in this, to-wit:

1. That the Court committed material error against plaintiff in sustaining the demurrers of the defendants Ben Kapp, Bert Cox, Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, and each of them to the second count of the indictment.

2. That the Court committed material error against plaintiff in sustaining said demurrers, in holding that the second count of the indictment stated no offense on the ground and for the reason that the misrepresentations of fact alleged were not representations of a material fact within the meaning of Section 35, Criminal Code, inasmuch as the pertinent provisions of the Agricultural Adjustment Act of May 12, 1933, Chapter 25, Title I (U. S. C., Title 7, Sections 602, 608), are void.

3. That the Court committed material error against the plaintiff in sustaining the said demurrers, in holding that Section 35 of the Criminal Code (U. S. C., Title 18, Section 80) and Section 37
39 of the Criminal Code (U. S. C., Title 18, Section 88) did not extend to and punish the offenses and acts of the defendants alleged in Count 2 of the indictment herein.

WILLIAM C. LEWIS,
United States Attorney, Western District of Oklahoma.

[File endorsement omitted.]

40 In United States District Court

[Title omitted.]

Order Allowing Appeal to the Supreme Court of the United States

Filed May 5, 1937

This cause having come on this day before the Court on the Petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining a demurrer of the defendants Ben Kapp, Bert Cox, Lee Hopper, Tom Woods, Ralph McLarty, and L. L. Green to each and every count of the indictment in said cause, and that a duly certified copy of the Record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court in sustaining the demurrers of the defendants to the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

41 It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Enid, Oklahoma, this 5th day of May 1937.

By the Court:

EDGAR S. VAUGHT,
Judge.

[File endorsement omitted.]

43 Citation in usual form showing service on Wilkinson & Hudson et al., filed May 12, 1937, omitted in printing.

46 In United States District Court

[Title omitted.]

Praecipe for Transcript of Record

Filed May 12, 1937

To the Clerk, United States District Court, Western District of Oklahoma:

The appellant hereby directs that in preparing transcript of the record of this cause in the United States District Court for the Western District of Oklahoma in connection with its appeal to the Supreme Court of the United States you include the following:

1. Indictment.
2. Demurrers.
3. Opinion.
4. Judgment sustaining demurrers.
5. Petition for Appeal to the Supreme Court.
6. Statement of Jurisdiction of Supreme Court.
7. Assignments of errors.
8. Order Allowing Appeal.
9. Notice of service on appellee of Petition for Appeal, Order Allowing Appeal, Assignment of Errors, and Statement as to Jurisdiction.
10. Citation.
11. Praecipe.

William C. Lewis
WILLIAM C. LEWIS,
United States Attorney, Western District of Oklahoma.

47 Service of the foregoing Praecipe for Transcript of Record is acknowledged this 8 day of May 1937.

WILKINSON & HUDSON,
STEELE & BOATMAN,
O. A. CARGILL,
Attorneys for Defendants.

[File endorsement omitted.]

48 In United States District Court

[Title omitted.]

Election as to Printing

Filed May 26, 1937

The plaintiff hereby elects to have transcript of record on appeal to the United States Supreme Court in the above cause printed under the supervision of the clerk of said Supreme Court.

May 26th, 1937.

WILLIAM C. LEWIS,
United States Attorney.

[File endorsement omitted.]

49 Clerk's Certificate to foregoing transcript omitted in printing.

51 In Supreme Court of the United States

Statement of Points Relied Upon, and Designation of Entire Record for Printing

Filed June 2, 1937

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

Stanley Reed,
STANLEY REED,
Solicitor General.

Service acknowledged June —, 1937.

[File endorsement omitted.]

(Endorsement on cover:) File No. 41578. W. Oklahoma, D. C. U. S. Term No. 97. The United States of America, appellant, *vs.* Ben Kapp, Bert Cox, Tom Woods, etc., et al. Filed May 29, 1937. Term No. 97 O. T. 1937.